

Reevaluating the Formal Requirements of Wills: Advocating for the Integration of Electronic Wills

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ABSTRACT

This paper aims to examine the nature and purpose of the formal requirements of Wills, highlighting their limitations and the need for adaptation in the context of modern electronic communication. The doctrinal research method was employed to evaluate legal problems and analyse the current statutory framework governing Wills. The study found that the traditional formal requirements for Wills, intended to provide testamentary protection and serve as legal proof of execution, often fail to meet their purpose effectively. Judicial and judicious applications of these rules have revealed significant limitations. There is an urgent need for the law to adapt to technological advancements by incorporating electronic Wills. This adaptation would address the inadequacies of current formal requirements and ensure the effectiveness of testamentary dispositions as evidenced in its use in South Africa by all categories of persons- with or without legal knowledge; in the United States of America for exigencies and in Australia to ensure high level of confidentiality and secrecy. The paper recommends articulated formalities supported by electronic communication to achieve testamentary goals. It suggests amendments to the extant laws on Wills in jurisdictions where provisions for dispensing powers are missing while detailed and applicable electronic Will legislation is recommended for jurisdictions that have long recognized the need for testamentary disposition to join the global advancement in technology.

Keywords: Electronic Wills, Formal Requirements, Testamentary Protection, Wills.

ABSTRAK

Makalah ini bertujuan untuk mengkaji sifat dan tujuan persyaratan formal Wasiat, dengan menyoroti keterbatasannya dan kebutuhan akan adaptasi dalam konteks komunikasi elektronik modern. Metode penelitian doktrinal digunakan untuk mengevaluasi masalah hukum dan menganalisis kerangka perundang-undangan saat ini yang mengatur Wasiat. Studi ini menemukan bahwa persyaratan formal tradisional untuk Wasiat, yang dimaksudkan untuk memberikan perlindungan wasiat dan berfungsi sebagai bukti hukum pelaksanaan, sering kali gagal memenuhi tujuannya secara efektif. Penerapan peraturan ini secara yudisial dan bijaksana telah mengungkapkan keterbatasan yang signifikan. Ada kebutuhan mendesak bagi hukum untuk beradaptasi dengan kemajuan teknologi dengan menggabungkan Wasiat elektronik. Adaptasi ini akan mengatasi kekurangan persyaratan formal saat ini dan memastikan efektivitas disposisi testamenter seperti yang terlihat pada penggunaannya di Afrika Selatan oleh semua kategori orang—dengan atau tanpa pengetahuan hukum; di Amerika Serikat untuk situasi darurat dan di Australia untuk memastikan tingkat kerahasiaan yang tinggi. Makalah ini merekomendasikan formalitas yang terartikulasi yang didukung oleh komunikasi elektronik untuk mencapai tujuan testamenter. Makalah ini juga mengusulkan amandemen terhadap undang-undang yang berlaku tentang Wasiat di yurisdiksi di mana ketentuan untuk kekuasaan dispensasi tidak ada, sementara undang-undang Wasiat elektronik yang rinci dan dapat diterapkan direkomendasikan untuk yurisdiksi yang telah lama mengakui kebutuhan disposisi testamenter untuk mengikuti kemajuan teknologi global.

Kata kunci: Persyaratan Formal, Perlindungan Testamenter, Surat Wasiat, Surat Wasiat Elektronik.

INTRODUCTION

Prior to the advent of modern Wills, the oral disposition of property by the elite in society before their death was given validity based on the testimony of the witnesses present at the occasion. These

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Received: June 20, 2024; Accepted: September 4, 2024. Published: September 6, 2024

dispositions were often referred to as deathbed declarations, made by testators who presumed they would soon die, and their death often occurred shortly after these declarations (Hacker, 2010). Such oral declarations, while seemingly straightforward, had inherent formal procedures that were known and followed by those who used this method for passing on their property (Martin, 2020).

The historical context of ancient oral Wills reveals that testamentary wishes had to be declared in specific settings, such as during gatherings in Rome, and in the presence of at least six witnesses (Ellart, 2014). Five witnesses would later confirm the testator's declaration, while the sixth would oversee the distribution of assets, ensuring that the testator's wishes were honoured. Despite this structured approach, oral Wills faced significant challenges, including the lack of objective evidence to prove the testator's intentions, difficulties in verifying the truth of oral claims, and the absence of tangible proof linking the testator to the expressed wishes (Martin, 2020). The case of *Cole v. Mordaunt* (1926) gives a clear illustration of the shortfall in oral Wills. In that case, the surviving spouse of a testator claimed that through an oral Will, her late husband left all his property to her after he revoked an earlier oral Will which profited the children of his first marriage (*Cole v. Mordant*, 1926). The Court refused to give validity to the claims in the oral Will alleged by the wife of the testator because the claims could not be substantiated with concrete evidence namely a written document which the Statute of Fraud (1677) made compulsory for the writing of Wills and the revocation same. Similarly, in *White v. Trustees of the British Museum*, (1926), the Court emphasized the importance of using physical evidence ie the signatures of the testator and the attesting witnesses to establish a nexus between the testator named in a Will and the testamentary wishes made therein (*White v. Trustees of the British Museum*, 1926).

The evolution from oral to written Wills marked a significant development in testamentary practices. Perhaps, if the technology available today had existed during the pre-writing era, recording and verifying oral Wills would have been far less laborious. Technological devices could have been employed to capture and retain information that would support the oral statements of testators, providing valuable evidence for courts to ascertain the true intentions of testators. However, societal development progresses in stages, from purely oral communication to written records, and eventually to advanced technological methods (Claiborne, 1977). The limitations in one communication medium present the needs for advancement which the new medium not only addresses but also seeks to build on for unlimited collective gains. For example, the written Will presented for probate in *Amadi v. Amadi* (2017) as the last and final Will of Augustine Umunakwe Amadi by his second and last wife under whose care he passed on, on 24th October, 1992 was contested by the deceased's first wife and children who maintained respectively that their late husband and father died intestate (*Amadi v. Amadi*, 2017). The latter led evidence to show that the search conducted after the testator's demise revealed that no Will was lodged in his name. It was also claimed that while the named testator was alive, he was known as Augustine Umunakwe Amadi but the Will presented as that made by the deceased has the name Augustine Umunakwe Duruaku Amadi which has the additional name Duruaku; a name alien to those who knew the deceased during his life time (*Amadi v. Amadi*, 2017).

The Will was denied probate not for defects on the face of the document but because the provisions of the Evidence Act (2011) was not followed (*Amadi v. Amadi*, 2017). Perhaps, the Will would not have been contested if technological devices were employed during the Will making process to capture the testator's activities as he communicates his last wishes (Beyer, 1983). Again, reference to the procedure (Evidence Act, 2011) which the Court relied upon for its judgment would have been uncalled for. On the other hand, if the claims of the other party were genuine, the side with unproven evidence would not have had the courage to go to Court because the electronic medium would have recorded and stored the date,

time and the identity of the person who made the alleged Will through metadata information (Papadopoulos, 2012).

The doubts raised about the authenticity of the Will in the case of *In re Estate of Ciaffoni* (1982) would probably have been cleared if modern technological devices were employed to store the Will in a special password secured system that would remain accessed until the time of its reading (*Alan Yazbek v. Ghosn Yazbek*, 2013). Those who contested the Will averred that some pages of the original Will made by the testator were removed and replaced with sheets that contained the wishes of some other persons other than the maker of the Will (*In re Estate of Ciaffoni*, 1982). The Court refused to validate the testator's Will even though it was preserved legally through traditional mechanism (Delta State Civil Procedure Rules, 2009).

The modern era presents an opportunity to address the limitations of traditional Wills through the integration of electronic Wills. Electronic Wills can leverage technology to provide a reliable and verifiable means of expressing testamentary intentions. This approach not only aligns with contemporary technological advancements but also enhances the accuracy and accessibility of testamentary documents. The application of electronic Wills can mitigate the issues associated with oral and traditional written Wills, such as the high level of suspicion over Wills, misinterpretation, and to some extent, reduce the cost of amending Wills which is akin to testamentary disposition (Abayomi, 2001). However, electronic medium of communication may not be completely free from fraudulent practices which is expected in every transaction where there are benefits to be derived from another most specially, where those who have fair knowledge of the nature of that transaction belong to the younger generation. But, the continuous advancement in technology has innovations aimed at limiting such practices and apprehending the right culprits (Papadopoulos, 2012).

In light of the foregoing, this article appraises the evolution of formal requirements in Wills and advocates for the adoption of electronic Wills as a means of conveying testamentary wishes so that the objective for the inclusion of formal rules in Wills will be achieved. The discussion will unfold in several parts: Part II provides a historical background to the use of formal rules in validating Wills; Part III examines the application of the 1837 rules to Wills; Part IV explores the use of electronic Wills to fulfil the purposes of formal rules. Part VI concludes the article.

The importance of this research lies in its potential to modernize and improve the legal processes surrounding Wills. By incorporating electronic Wills, the legal system can offer greater testamentary protection, ensure more accurate reflection of testators' wishes, and streamline the probate process. This research aims to bridge the gap between traditional testamentary practices and modern technological capabilities, ultimately enhancing the reliability and efficiency of Wills in the digital age.

RESEARCH METHOD

This study employs a doctrinal research method, involving a comprehensive analysis of legal texts, statutes, case law, and scholarly articles to evaluate the formal requirements of Wills and the potential for integrating electronic Wills. The doctrinal method is chosen for its systematic approach to understanding legal principles and its relevance in legal research.

The primary materials for this study include legal texts and statutes, such as the Wills Act (1837) and subsequent amendments, case law that interprets and applies the formal requirements of Wills, scholarly articles on the evolution and current state of testamentary laws, and technological tools like digital platforms and software for analysing electronic Wills. These tools include document management systems and secure digital signature applications.

The procedure begins with an extensive literature review of existing literature on the formal requirements of Wills, focusing on historical developments, current practices, and emerging trends in electronic Wills. This is followed by a statutory analysis to identify the prescribed formal requirements for Wills and evaluate their effectiveness in ensuring testamentary protection and legal proof. Additionally, case law analysis examines judicial decisions to understand how courts have interpreted and applied formal requirements, highlighting the challenges and limitations encountered in traditional Wills.

The study also includes a technological assessment, investigating the capabilities of current technological tools in creating, validating, and storing electronic Wills. This assessment evaluates the security features of digital signatures and the reliability of electronic storage systems. A comparative analysis is then conducted to evaluate the effectiveness of traditional Wills versus electronic Wills in fulfilling formal requirements, focusing on ease of execution, reliability, and legal robustness.

Data analysis methods include qualitative analysis, which involves interpreting legal texts, statutes, and case law through thematic analysis to identify recurring themes and issues in the formal requirements of Wills. Comparative analysis evaluates the differences between traditional Wills and electronic Wills, comparing procedural requirements, security measures, and legal acceptance. Additionally, a technical feasibility study assesses the implementation of electronic Wills using available technological tools, evaluating their security, accessibility, and user-friendliness for testamentary purposes.

To ensure the research can be replicated, the study details the following steps: gather all relevant legal texts, statutes, and case law on Wills and testamentary dispositions; conduct a thorough literature review using academic databases and legal repositories; use the specified digital tools and software to analyse the capabilities of electronic Wills; apply qualitative and comparative analysis techniques to interpret the data collected from legal texts and technological assessments; and document all procedures and findings systematically. By adhering to these detailed steps and utilizing the specified materials and tools, readers can replicate the study and validate the findings presented in this research.

RESULTS AND DISCUSSION

Historical Background to the Use of Rules in Validating Wills

One of the earliest legal rules on transfer/transmission of property from one to another is contained in the Copper and Scales Rule of Rome (Nelson & Starck, 2013). The rule is remarkable for its use in authenticating claims to ownership of landed property vested on a beneficiary by the donor of the property (Nelson & Starck, 2013). Under the rule, the donor of property would transfer his immovable property to his chosen beneficiary in the presence of a number of witnesses ranging from five to seven (Nelson & Starck, 2013). The witnesses would also append their signatures on the instrument of transfer to confirm the transaction (Nelson & Starck, 2013). The scales rules appear to have emphasized the attestation requirement in documents of transfer but did not do more than that (Maine, 1884, pp. 198–202).

The Statute of Wills of 1540 introduced an additional requirement to the existing scales rule namely, that gifts made to persons shall be written before the death of the donor (Holdsworth, 1973). By the dictates of the Statute, it was immaterial whether the donor or another did the writing or signed same (Holdsworth, 1973). Writing appeared to be a means of proof of transfer of title but not to establish the identity of the donor (Holdsworth, 1973). Therefore, the requirements of attestation and writing may be traceable to the aforementioned laws.

The framers of the 1677 England Statute of Frauds found the need to advance the rules further through expansive provisions on the already existing guidelines. It may have found the need to do that

because of the fraudulent practices which marred the unsubstantiated claims to ownership of landed property at that time (Holdsworth, 1973). Thus, by section V of the Statute of Frauds the devise of immovable property must be in writing but no specific mention was made about the document being written by the maker or as directed by him. Section XIX of the same law states that the gift of movable property worth more than thirty pounds in a Will shall be made in writing. The law also stipulates that the revocation of the above shall only be effective when it is in writing and witnessed by three persons who may or may not have actual knowledge of what they were witnessing (Holdsworth, 1973).

The application of the provisions of the Statute of Frauds to Wills was demonstrated in *Cole v Mordaunt* (1926). In that case the surviving spouse of the maker of the Will claimed that through an oral Will, her late husband left all his property to her after he revoked an earlier oral Will which profited the children of his first marriage. The Court refused to give validity to the oral Will the deceased's wife claimed her husband made because the standard set in the Statute of Frauds for the revocation of Wills was not followed. The case showed the usefulness of the application of formal requirements in the determination of cases on Wills. But the use of the requirements was limited in scope. Movable properties were excluded from the purview of the rules contained in the statute. Thus, while the Statute of Frauds may have proved effective in detecting frauds against Wills, its application created so much confusion in the devolution process as shown in the case of *In re Matle's Will* (1892).

The facts of the above case were that the deceased stated to seven witnesses while dying, his wishes as far as his real property was concerned. His solicitor made a draft of a Will from the oral facts given to him by the deceased while alive. Unfortunately, the deceased was prevented by ill-health from appending his signature on the outline or on the completed Will before his death. The Prerogative Court held that the deceased failed to make a written Will which could be used to dispose his real property and that the draft would not succeed as an oral Will under strict interpretation of the law because the aim of the deceased was to make a written Will.

The Court may not have considered any extraneous evidence to show that the deceased assented by words or conduct to the unsigned document presented by his Solicitor although it added that notes taken by one of the several witnesses showed a defective written Will which could at best pass as an oral Will. Despite the above hint from the Court, the Will was denied probate. Thus, the requirements spelt out for Wills in the Statute of Fraud was also deficient and fell short of the ideal instrument needed for the actualization of testators' donative intents. The seemingly inability of the Statute of Fraud to address the object of its creation made many to call for its review upon which the following recommendations were made:

1. Two witnesses could affirm a Will;
2. The witnesses who affirm the Will for the disposition of immovable property shall be in the physical presence of the testator;
3. Only persons qualified under the law can affirm the conveyance of immovable property made through Wills.

The recommendations of the commission set up to review the Statute of Frauds found its way in the Wills Act of England, 1837 which came after the Statute of Frauds. Device on land and personal property are covered by the Wills Act where formal guidelines for making Wills are set out to primarily ensure that a would-be testator makes his Will as a free agent and that his wishes remain unaltered after his demise. The aforementioned objectives were also reiterated by the Court in its subsequent judgments in the cases of *Huffman v. Huffman* (1964) and in *Savage v. Bowen* (Va. 1905). In the former, the Court held that the reason for specifying that Wills should be written is to ensure that testamentary wishes are not altered

once communicated whilst in the latter, it was held that the formal requirements are meant to protect testators from external influences during the Will making process and thereafter, to ensure that the confidentiality of the wishes conveyed is maintained.

The Application of the 1837 Rules to the Validation of Wills

The requirements for the validation of Wills are spelled out in the legislation on Wills. The essential features of the requirements are that:

1. Formal Wills shall be in readable form while informal Wills can also be communicated orally;
2. A Will shall be authenticated by the maker;
3. Authentication by the maker shall be certified by witnesses fixed at the same location as the maker of the Will;
4. The endorsement made on the Will by the witnesses shall be affirmed by the maker of the Will.

The aforementioned got judicial backing in Nigerian through the Court of Appeal pronouncement in *Ezenwere v. Ezenwere* (2003). The requirements have been summarized under three headings namely; writing, signature and attestation.

Formal Requirement of Writing

The formal requirement of writing in Wills appears to literally imply that the intentions of a testator shall be represented vividly with the use of symbols namely letters or otherwise expressed in a readable form (Hornby, 2010). The above requirement may not have imposed limitations on the educational background of would-be testators or on the wholeness of their physical state of health. Thus, the writing requirement could be met by an illiterate or blind testator who engaged another to represent his testamentary wishes with the aid of letters and thereafter the content of the representation was brought to his knowledge and approved by him (Sagay, 2006, p. 137). In *Instifil v. Christian* (1951), the testator was without sight but engaged another to write his Will which afterwards was read to him and his approval obtained. The Will was confirmed valid because it met the writing requirement.

The Court's decision suggests that formal Wills shall in all occasions be written whether the maker is with or without sight. What would probably be an issue in the latter circumstance was established by the Court in *Fincham v. Edwards* (1842) and that is the possibility of having a confirmation from witnesses that the visually impaired had knowledge of what another wrote on his behalf and that he thereafter approved of it.

The emphasis on the prerequisite that Wills written on behalf of testators shall have their consent for the writing requirement to be met was buttressed by the Court in *Okesola v. Boyle* (1998). The testator in the contested Will was uneducated so he engaged the services of his lawyer who wrote the Will on his behalf but under his instructions. Annexed to that Will was an unsigned illiterate *jurat*. The defect in the Will identified during its determination was not that the testator was uneducated or that the *jurat* was unduly signed but that there was no piece of evidence before the Court from which it would have convinced itself about the following:

1. The fact that the Will was read over to the illiterate testator in the language known and understood by him and
2. He subsequently approved of its content.

The Court stressed further that it is significant for testators to have adequate knowledge of the content of the Wills made by them but written by another on their behalf.

Therefore, judicial authorities recognize and attach significance to testators' assents to their Wills much more than the forms of representation of same. Perhaps, the legality given to informal Wills made under life threatening circumstances whilst under the discharge of official military duties is derived from the priority given to testators' knowledge and approval of their testamentary wishes over the form adopted in communicating same (Abayomi, 2004, p. 242).

Yet, the statutes on Wills specify writing as a fundamental requirement for statutory Wills though not necessarily on a paper surface and not compulsorily with ink on pen as the writing instrument (Hirsh, 2020). The facts of *In re Will of Brad way* (2018), where the testator used his blood and not ink to write his codicil which was accepted as a valid testamentary document show that the materials used in expressing the last wishes of testators may not be a ground for Wills to be denied legal recognition. In *Reed v. Woodward* (1875) where the testator used chalk to write his testamentary wishes, the Court refused to honour those wishes. The Court may have reasoned that the testator's testamentary wishes could easily be erased and replaced with another not solicited for because chalk is not an indelible substance. Therefore, the intention of the law for the writing rule in testamentary disposition is to ensure that the testamentary wishes made by testators remain in a permanent state both during and after their life-time.

Perhaps, what the framers of the law failed to envisage is that the permanency of the wishes expressed in a Will is achievable through a combination of various factors such as the state of the medium of communication employed, the place and manner through which the document is stored. Where the document containing testamentary wishes is in a state that is likely to be affected by insects and rodents in search of objects to assuage hunger, the permanency of the wishes cannot be guaranteed even though, they are written. Similarly, the content of a Will no matter how well written may be distorted where the document is stored in a damp place or under leaking roofs. Thus, it beholds on the legislation to examine the provisions of the law on writing requirement for Wills so that through amendments, the purpose of the law can be adequately captured.

Formal Requirement of Signature in Wills

Before the year England, little or no attention was placed on signature requirement in Wills conveying a testator's directives on the distribution of his immovable assets (Horton, 2024). Thus, in *Plater v. Groome* (1852), the last wishes on immovable property conveyed in an unsigned Will were admitted to probate because the Court read the testator's approval into the document. In *Beali v. Cunningham* (1843), the Court found the testator's approval to the unsigned Will he made in the signed codicil executed by him in 1832. Legal recognition appeared to have been given to those Wills as well as to the Will in the case of *Simonelli v. Chiarolanza* (2002) based on the exercise of discretion and same can be done arbitrarily.

The provisions of the legislation on Wills (1837) gave signature well defined roles and stopped the indiscriminate application of discretion by the Court to arrive at testators' approval to their Wills. The law made assent an integral part of signature such that the latter implied an unqualified approval from the maker of the Will. The only condition which must be met for the above to apply is that while executing the Will, the maker shall demonstrate his intends for the Will to act as his last dispositive instrument. In *Hamlet v. Hamlet* (1945), the Court seemed to have spelt out the component elements of signature when it held that included in signature is the maker's assent to the content expressed therein and his free volition to execute a Will.

The details of what the law requires for the execution of a Will are:

1. The maker of a Will shall append his mark of approval to his Will or give instructions for another to do same before him; (Sagay, 2006)

2. The said mark of approval shall be made or admitted when already made, before persons who will affirm same simultaneously;
3. Persons called to affirm the execution of a Will by the maker shall sign the document before the maker.

The testator's signature was described in *Allen v. Dalk* (2002) as the most important formal requirement of statutory Will. Its features which make it unique and superior to other requirements of formal Wills are:

1. It signifies approval from the testator to the content of the Will ascribed to him;
2. Points to the testator as the originator of the Will.

In *Deeks v. Greenwood* (2011) the Court affirmed further the above functions of signature when it stated that signature links the maker of a Will to its content and shows his approval to the wishes expressed therein.

Signature seems to be the last inclusion in a document thus, when found in a Will, presumptions that the Will may stand as a draft copy or an incomplete document is erased (Gulliver & Tilson, 1941). In *Warwick v. Warwick* (Va. 1890), the Court added that where a testator appends his signature to a document containing his last wishes, the implication is that he was done with his instructions as regards what would happen to his estate after his demise. The latter appears to be in consonance with statutory provisions which suggests that a testator's signature in his dispositive instrument should be placed where it would be read that his authority and consent govern the whole content of the Will.

Different interpretations have been given to the specifications employed to mark testators' signatures in Wills. Mere writing of names as the first and last information filled in a Will was disapproved as mark of signature in the case of *In Re Proley's Estate* (Pa. 1980), In that case, the Court held further that the testator's name failed to authenticate the testamentary wishes contained therein, so, his assent to the wishes was missing.

The above can be contrasted with the decision reached in the case of *In matter of Estate of Cunningham*, where the name of the testator written at the beginning of his dispositive instrument was approved as his authority and assent over the wishes, therefore, was sufficient to act as his signature. The testator's name in the latter case stood for his signature and authority over the content of the Will while in the case of *In Re Proley's Estate* (Pa. 1980), the name of the testatrix which formed part of the information provided in a Will designed as a fill- in- the- blank document was denied same function. The Court may have construed the testatrix' name as information elicited involuntarily thus, lack the element of volition.

However, a Will is regarded as an invalid instrument where the testator's signature or any form of authentication is missing on it. The case of *In Re Estate of Brewer* (2015) shows that a Will was bad if unexecuted by the maker and the illegality of an unsigned document containing last wishes with or without a signed legal document annexed to it was spelt out by the Court in the case of *In Re Estate of Chastain* (2012). The facts of the case are that Mr. Thomas Grady Chastain typed a two-page document in which he passed his property to his daughter. The first paragraph of the document contained his name followed by an expression of how he would want his property distributed after his demise. He had three witnesses who subscribed to the Will individually. Instead of appending his signature on the document, he signed the affidavit which he deposed to, to substantiate the truth of his last wishes contained in the document to which the affidavit was attached. The Court held inter-alia that Mr. Thomas did not create a valid Will despite the extra effort he took to ensure that no doubt was raised in the minds of those he left behind that the Will was made by him. The Court found also that the affidavit he signed did not form part of his Will so; his signature in the affidavit was irrelevant to the document containing his last wishes.

The Court had a different opinion in 1978 on the impact of a signed affidavit on an unsigned Will and reasoned then that to disallow an unsigned Will to which a signed affidavit was attached would amount to giving priority to technicality over substance which may not promote the object of testamentary disposition. The latter line of reasoning was followed by the Court in *Westmoreland v. Tallent* (2001), where the testatrix's signature in a sworn affidavit attached to her Will was sufficient to authenticate the content of the unsigned Will.

Prior to the Wills Act, the Court had demonstrated the essence of corroboration in determining testator's assent to testamentary wishes expressed on paper. In *Watts v. Pub. Admir* (1829), the testator did not execute the Will he kept in an iron box containing other property of great value. The Court disregarded the absence of the testator's signature in the document and gave effect to the wishes contained therein. The decision reached must have been based on the fact that the testator took special care to preserve the Will judging from where it was kept. The implication of his action is that the document has his consent and so should be honoured. Also, in *Brown's Ex'r v. Tilden* (1822), the Court gave validity to an unsigned Codicil enclosed in the executed Will made by a testator. Again, the Court must have reasoned that the place the testator kept the Codicil showed that he would want the approval given to the Will to be extended to the Codicil.

In the two instances above, the Court sought supportive evidence to give validation to the defective Wills made by the testators. The additional evidence in each case strengthened the Court's interpretation of the Will as that which emanated from the named testator. The paper document alone could not provide that needed piece of evidence which saved the testamentary wishes expressed therein. In the same vein, formal requirements of the law have no room for inadvertent omissions, thus, would invalidate genuine expressions of testamentary wishes that do not adhere to the law on signature.

One of the laws on signature is that any mark can be used to indicate signature provided the form adopted by a particular testator is his regular sign of indicating that a document came from him. In *Quimby v. Greenhawk* (1934), the Court approved the testamentary wishes expressed in a document which bore a regular sign by which the maker of the document indicated finality to his thoughts although the sign was made by another on his behalf. In the case of *Estate of Dellinger v. 1st Source of Bank* (2003), the Court granted probate to a Will that contained a hand signal of the testator as a symbol of his approval to his lawyer's signature in his document. The testator's initials were approved in *Murphy v. Martius* (1933) and first name alone was good enough as signature in Appeal of Knox, A testator's nickname was accepted in the case of *In Re Succession of Caillouet* (1890). A cross, not properly written letter 'x' and a rubber stamp were admitted by the Court as eligible forms of signature made by testators in the cases of *In Re Wilkins Estate* (1939), *Estate of McCabe* (1990) and *Philips v. Najjar* (1995).

An explanation was provided in *Amutsaghan Dafioka & Anor v. Couple Edede & 5 Ors* (29/2/68) for the liberal approach adopted for the interpretation of the signature requirement of the statute on Wills. The testator's last wishes in the instant case, was stated by him in his native language but expressed in English Language by another who read and explained same before requesting him to make his thumb impression on the space meant for signature. The Will was witnessed by persons who made report about the incident. The Will was challenged because it contained the testator's thumb impression instead of his handwritten signature. The Court expounded thus:

1. The Concise Oxford Dictionary gives the meaning of "to sign" as an acknowledgment or guarantee that letters, deeds, pictures, books, articles, petitions with the signature of a person are his own creation or has his own authority or consent and that signature could be indicated by affixing one's name or initials or a recognized mark;

2. The second impression of Jowitt's Dictionary of English Law explains that a person signs a document when he writes or marks something on it as a token of his intention to be bound by its content.

The incisive explanation above was followed in *Brown v. Fluharty* (2013) where a visually impaired man gave instructions to his nephew on how he would want his property to be distributed after his death. The nephew wrote the instructions and brought the content to his knowledge before two staffers of the home who thereafter signed as witnesses but the man whose last wishes were affirmed neither signed nor used any mark of identification on the document written on his behalf. The trial Court validated the wishes because it was convinced that the evidence before it showed that Mr. Bright Mccausland, intended the document to be his Will. But the apex Court overturned that decision and invalidated the Will. The Court counselled in its judgment that Mr. Mccausland could have used any sign to authenticate the Will.

The judicial approval given for the use of any mark by a testator to give assent to his Will may be queried for lack of proof which will link the mark used to the testator named on the paper Will. The law on Wills needs to be more expansive on other means through which testators can be linked to their Wills without difficulties. Formal requirement on the use of mere signs at the end of last wishes contained in a document may not be enough. The absence of such sign should not also be a conclusive ground for the denial of testators' testamentary wishes. Jurisdictions such as Australia and South Africa identified the above long ago and included in their laws on Wills provisos which will enable the Court to give assent to genuine Wills which may not conform to formal rules.

Formal Requirement of Attestation in Wills

A Will is deemed valid when confirmed by two witnesses that a testator gave his authority and approval to the wishes contained therein. In *Whitecare v. Crowe* (2012), the Court described attestation as the act by which witnesses perceive with their eyes the signing of a Will by its maker. But attestation may involve more than just the use of mere sight to observe an act (Storrow, 2022). In addition to the visual witnessing of the symbolic legal resolution made by a testator to give effect to all appointments and dispositions contained in his Will after his death, witnesses also attest to the Will by confirming same through their signature made visible on the document (Storrow, 2022). Thus, the statutory requirement for attestation is to the effect that (Abayomi, 2004, p. 242):

1. The confirmation made by two witnesses present at the same time is authentic;
2. The witnesses shall subscribe to the Will in the presence of the testator and before one another;
3. The confirmation can be made in any form.

The attestation requirement is meant to ensure that there was no deceit or coercion during the Will making process (Maine, 1884, pp. 198–202). This particular requirement goes more to substance than to form because the fact it seeks to control may not be read on the face of the paper Will. Although there is a presumption of voluntary approval from the testator that he was not coerced or deceived at the time he made his last wishes expressed on paper, the same cannot be held when the Will is challenged (Maine, 1884, pp. 198–202). Thus, the law should contain more than what is communicated at present so as to reflect the true intention of the attestation clause.

A further requirement for attestation to be properly made is that one who confirms a Will or his spouse would not benefit from the Will. Where the law is disregarded, the Will would be granted probate but the gifts so made would fail. The implication of the above is that a Will can be given legal status even

when the proof of confirmation is from a beneficiary who has special interest in the Will. Therefore, mere confirmation from witnesses could be an inadequate proof for the realization of the goal intended by the statute for its inclusion as a formal requirement.

Some schools of thought hold that the priority given to the confirmation clause by the statutes on Wills may be underserving. The argument put forward by them is that the clause has outlived the purpose of its inclusion in Wills. They reasoned that the clause was necessary when the conveyance of immovable property in London was marred with unsubstantiated claims to ownership to land. Therefore, since the available records which would have verified such claims were destroyed by fire, witness attestation in documents became the alternative proof for the devise of landed property by persons who thought their death was imminent.

Today, the two aforementioned conditions have improved. First, Wills are made by testators who saw death simply as an inevitable end and not necessarily that it was at their door step. So, the thought of death was not the push for making a Will but the aftermath consequences of death. Again, there are sufficient means by which genuine proof of ownership to property (moveable and immovable) can be established. For example, instruments which transfer the right in immovable property are deemed registered and are stored both manually and electronically. While the document that is saved through manual means may be lost through fire out-break as witnessed in the pre-Wills Act era, the content of same document preserved electronically to which a website is created can be relied upon at any time. So, claims to right of ownership transferred through Wills can be substantiated with reference to independent evidence which is a better proof than the attestation made by witnesses to a Will. Those who canvass for this line of thought maintain that the exclusion of witness attestation from the formal requirements of a valid Will may do no harm to the Will.

Added to the above is the fact that those who confirmed a Will may predecease the Will in which case, the evidence which is so much sought for by the law will be non-existent. In the circumstances, its inclusion as a formal requirement for Wills becomes unhelpful particularly as those who didn't witness the Will may be called to testify to its existence even though such testimony will be of less probative value.

Perhaps, the little consideration given to the requirement of witness attestation in some jurisdictions may be attributed to the aforesaid reasons. In Pennsylvania for example, witness attestation is required for Wills authenticated by testators with the aid of symbols other than their wet signatures. Thus, where the latter is used, the Will need not include attestation clause. The statute seems to place more emphasis on the signature requirement than on the job of witnesses and perhaps, that may be the right way to go considering the complexities tied around proper attestation by the Court.

In *Groffman v. Groffman* (1969) judicial hint was given on what proper compliance to the statutory regulation on attestation entails. The Court held in that case that the two witnesses who confirm a Will must be at the same place with the testator to carry out their duty. The Will signed by the testator in the instant case needed to be admitted by him before witnesses who though were at the same location as the testator but were called into the room one after the other to acknowledge the testator's signature. The procedure was faulted because acknowledgement was not done simultaneously by the witnesses. The latter position was maintained in *George v. George* (1964) where the Court invalidated the testamentary wishes that were affirmed by one of the witnesses in the testator's absence. In *Glenn v. Mann* (1975), the Court stated that attestation should be done with the conscious knowledge of what was confirmed. It added that it would not be proper to limit the act to only a physical one because attestation can be done simultaneously through other means.

The above hint from the Court is a specific call for a review of the law on attestation and by extension an amendment on statutory provisions for formal requirements for Wills. The old long statutory position which gave the Court the impetus to apply formal rules strictly as a necessary precondition for the actualization of testamentary wishes may not be adequate today. Thus, Wills which were held invalid because:

1. A testator failed to admit his Will before two witnesses;
2. Witnesses to a Will had no knowledge of the content of the Will;
3. A testator placed his signature at the wrong place in his Will.

The Court would only validate the Will communicated through the traditional medium where all the formal requirements are strictly adhered to (*Ezenwere v. Ezenwere*, 2003). It would appear that the proof of traditional Will is based more on technicalities than on substance- a practice which the Court has held in other instances to be against the dictates of justice (*Taiwo Okeowo v. Migliore & 3 Ors.*, 1979) and by extension against the actualization of testators' wishes (Weisbord, 2012). The framers of testate succession law must have envisaged a situation where more persons would opt for testation instead of intestacy because of the superiority of the former over the latter (Horton, 2019). Intestacy rules are restrictive and uneconomical in application (Horton, 2019). First, the rules recognize only the direct relatives of the deceased in the distribution of his estate and the estate could be sliced into smaller shares such that some of his beneficiaries may realize no economic value from their shares. The above limitations of intestacy make it not to be the choice of many (Horton, 2019). Testacy on the other hand, has not fared well either, particularly in contemporary times where advancement in technology has become a global phenomenon.

The present generation is a paperless generation. Facts are typed straight into mobile computer devices and the retrieval of information is done seamlessly from those devices. Computer devices are used to create, change, disseminate and store information on daily basis by persons of different age groups and with different educational qualifications. The use of pen and paper is seen as an archaic practice which is not befitting of modern times. The consequence of the above is that potential testators in jurisdictions where the Wills law of the 15th century has remained operational may die without leaving a Will not because they intended it so but because the statutory law on Wills refused to move with time and change with the modernity they are used to.

The retrieval system of Wills made and stored in the traditional way may also suffer setbacks in the modern technological era. The first problem that will confront the system is that of manpower with the requisite knowledge on manual filing system and retrieval method. The personnel trained in the act belong to the older generation- majority of whom have retired from active service. Those who are supposed to take over from them have no interest in the acquisition of the knowledge. Thus, retrieving Wills for the purpose of probate may take longer time than usual as the years go by. Some of the Wills not properly preserved may be lost to rodents and harsh weather and the harm done to such Wills may not be detected until the time of their reading.

Moreover, a time may come when the available space earmarked for housing files containing Wills may be inadequate to accommodate the increasing number of Wills made day after day. Even where provisions are made for increased space allocation, the files will continue to increase and take over the space meant for that purpose. The use of technological devices in the storage of Wills appear to be a necessity if future space issues must be avoided.

A modification of the laws on Wills can help reposition testamentary disposition so that the objectives behind its creation can be achieved. The inclusion of explicit provisions to amend the extant law

and accommodate genuine Wills made and stored through other means found desirable by testators will not only improve testamentary freedom but will also whittle down the lukewarm attitude nursed in some quarters about Wills (Papadopoulos, 2012).

Formal Rules and the Validation of Electronic Wills

Electronic Wills are validated on the basis of formal requirements. Unlike statutory Wills, the purpose of the rules is included in the features required to be met. So, to each rule, there are meaningful expectations that will enhance the acceptability of the testamentary wishes conveyed by a testator. Therefore, though an electronic Will may be in softcopy, it is written, and authenticated by the maker in a special way that is more comprehensive than mere formal rules. The confirmation process is equally distinct because the same location rule is met with ease through the aid of electronic medium.

Requirement of Writing in Electronic Wills

The United Nations Commission on International Trade Law otherwise known as the Model law on Electronic Commerce states that electronic communication would meet writing requirement where the under listed aims of paper and pen communication can be achieved. They are:

1. The form expressed remains readable over the years;
2. The content of the information so expressed would be unmodified whilst in the used form;
3. The information that is expressed in the used form can be duplicated;
4. The medium of expression used is admissible in Court and can serve as dependable evidence at the appropriate time and
5. The means of authenticating the information so expressed is available.

Information written with the aid of any computer device satisfies all of the above and has the added advantage of being retained in soft copy which makes it adequately secured from any external interference. The Uniform Probate Code provides that the writing requirement for Wills is met where Wills are written on a surface that would preserve the content of the document for a considerable long time. Electronic Wills are not written on tangible paper. They appear in Soft copy thus, the provision on writing in electronic Will laws may be more accommodative than the statutory Wills provisions.

The Court has on various instances relied on either the enacted laws on Wills or on ordinary meaning of writing to give effect to last wishes communicated in digital form. A Will written with a stylus pen on a computer tablet was adjudged valid in *In Re Estate of Javier Castro* (2013), because the materials employed by the testator allowed the Will to be read by others and that is in consonance with the purpose of the writing requirement provided in Ohio's statute on Wills. The Court's decision was based on the interpretation it derived from the definition of writing contained in the State's criminal code which recognized Soft copy of information retained in any electronic device as writing.

It has become imperative to use technological devices to make Wills under any law because of its added advantage. The use of pen and paper to convey testamentary wishes may have served useful purpose at the time writing was accomplished through their use but that was in the past, before the advent of digital means of communication which has infiltrated all spheres of life, law not left out. So, to insist on the continual expression of writing through the old means as the only way of meeting one of the regulations for the validation of Wills may jeopardize the purpose of the law for its inclusion and limit the use of testamentary disposition by many.

Requirement of Signature in Electronic Wills

Electronic signature may be defined as a character generated by electronic device and used in an electronic document to bind the maker of the document to its content. Its use has been given legal backing in some jurisdictions for the authentication of transactions other than the validation of Wills.

One of the foremost laws on the use of electronic signatures for commercial transactions is the UNCITRAL Model Law introduced in 1996. The Model Law as it was called became the guide for legislations made in other jurisdictions on the characteristics of electronic signatures and their legal status in electronic documents. In South Africa the Model Law became operational in 2002. Section 13 of the law is on electronic signature. The section approves the use of electronic signature where it among others:

1. establishes who the signer is;
2. Links the signer to the mark used;
3. Is exclusively used by the signer in all occasions;
4. Connects the signer to the document it authenticates so that any external interference would be noticeable.

Electronic signature can take any of the following forms:

1. A click on the expression indicating assent to the content of the document;
2. Scanned wet signature of the maker of the document;
3. A mark unique to the maker of the document;
4. A symbol at the bottom of a Will sent to an email address;
5. A typed named;
6. A video and/or voice recording of a person;
7. The signer's handwritten signature made with the aid of a stylus pen and
8. Any distinct sign which would convey peculiar characteristics of a person.

Electronic signature can be made formally or informally. Informal means is carried out when the initials or name or signature of the maker of the document is typed or written on the Will with the aid of an electronic device where such is possible. The formal means entail the inclusion of testators' peculiar features such as fingerprint or colour of eyeball in his electronic Will. The advantage of the latter is that with it only the testator whose features are recognized by the electronic device would be allowed access to the document for amendments and any subsequent alterations that are unsolicited for will bear the date it was made. The above will help dictate the presence or absence of external interference in a testator's Will.

Requirement of Attestation in Electronic Wills

The confirmation of Wills made in electronic form by witnesses follows the methods accepted by the Court for statutory Wills. The presence and affixation of the witnesses at the same location and time is also required where the testator simply acknowledges that the signature on the Will was made by him. The above method was adopted in the *Estate of Javier Castro* (2013).

In *Glenn v. Mann* (1975), the Court gave approval to remote attestation by witnesses when it held that the primary requirement for attestation is the conscious knowledge by the witnesses of their duty while confirming a Will. Thus, witnesses need not be affixed at a particular spot as the testator or by themselves. The latter position is contained in the provisions for attestation of electronic Wills in the electronic Wills statutes of some jurisdictions.

The electronic Wills statute of the State of Nevada specifies that attestation would be valid where declarations from witnesses are attached to or logically associated with the electronic Will and the Will

itself is maintained as an electronic record by a qualified custodian until it is unsealed. The provisions in the Indiana electronic Wills statute for the confirmation of a testator's Will is same as that recommended for statutory Wills in sections 9 and 15 of the Wills Act. In the State of Arizona, electronic Wills are said to be confirmed if sworn affidavits of witnesses who did the confirmation are incorporated in the Will and the Soft copy of the Will is maintained by a qualified custodian.

Validation of Electronic Wills

It would appear that the non-legal recognition given to electronic Wills in many jurisdictions is based on fears associated with the use of electronic medium of communication. The fears nursed against the use of technological devices to convey testamentary wishes can be traced back to the 1940s when technological advancement had not gained the magnitude of global acceptance and the nature of electronic security devices used today has not been developed (Hirsh, 2020). Goebel and Naughton (1944) were among the earliest critics of the use of electronic medium to convey final wishes of testators which are meant to be highly confidential and securely preserved once they are expressed and until the demise of testators. (Hirsh, 2020). The dual warned against the extension of modernity which is prone to fraudulent practices to a delicate document such as a Will because of its rudimentary nature (Hirsh, 2020). The fears they highlighted appear to be the underlying factor for the Court's hesitation in recognizing the legal qualities inherent in technological devices which can be extended for use in testamentary disposition (Horton, 2017).

The fears against the use of technological devices in the Will making process seem to have assumed larger dimension in contemporary times. Thus, it has moved from the simple manipulations of facts that were dreaded yesteryears to more complicated issues which many allege may threaten the very existence of the last wishes of testators (Kimberley, 2020). The fears associated with use of these devices range from the vulnerability of information generated through them to the absence of a nexus which will link a testator to a Will ascribed to him (Kimberley, 2020).

The former includes the various processes by which information in an electronic Will may be distorted. It could be through the continuous edition of the original Will made by a testator by another other than the maker of the Will to conceal vital information about the testator or the Will making process namely, that the Will was made under duress or that the original electronic evidence would reveal that he was unduly influenced or lacked the capacity to make a Will (Nelson & Starck, 2013). The purpose is to make the Will reflect the intention of that other person who is not the Will maker but it will have the semblance of the original Will (Kimberley, 2020). The Will could also be hacked into such that the confidentiality of the testamentary intentions contained therein is lost and it becomes susceptible to various kinds of arrangements – inclusion and exclusion of wishes not conceived or deleted by the maker (Oladipo, 2012).

In the latter case, a testator may not have made the Will which is ascribed to him but has the features resembling his on the document. The deception is made possible with the aid of artificial intelligence (Oladipo, 2012). So, it is possible for a Will to bear a signature which without proper scrutiny may look like that of the testator and be saved with a password used by him yet, he has no input in the wishes contained in the document and no knowledge of its existence. The fake electronic features manufactured for that purpose would be authenticating wishes which can neither be described as last or final since the fake author does not wish it so nor will it be the wishes of the dead named testator because it was put together by an author who may still be alive at the time the Will becomes operational. The anti-electronic Wills advocates have argued that the use of electronic devices in the Will making process renders formal

requirements insignificant and misleading because the basic features needed to validate last wishes may be present in a document but the requirements would be validating the mere wishes of another not that of the original testator (Hirsh, 2020).

Validation of Electronic Wills in Selected Jurisdictions

The possible hindrances to the use of electronic devices in communicating Wills are not peculiar to Wills made through that medium (*Amadi v Amadi*, 2017). Traditional Wills also suffer similar fate yet, they are recognized as valid dispositive instrument. Unlike paper Wills, electronic Wills have additional means of substantiating the originality of documents through the its devices that are continually developed to address fraudulent practices that may occur during electronic communication. One of the ways through which electronic frauds are tackled is in the inbuilt devices housed in the system that is put to use (Papadopoulos, 2012). The inbuilt crime detector is primarily aimed at controlling unwholesome practices that may be carried out on electronic devices and where they are done, the culprits are easily identified (Kimberley, 2020). The editing of a testator's electronic Will by another after it has been made can be detected through metadata information which is inbuilt in devices and becomes operational once a device is put into use (Papadopoulos, 2012). Metadata provides information as to time, date and name of persons who accessed a document created and stored in an electronic medium (Papadopoulos, 2012). The nature of changes made in the document and the frequency in which the changes were made are available and accessible for use and may help in differentiating original Wills from Wills manipulated by others. Metadata information was used by the Court in Australia in the case of *Alan Yazbek v. Ghosn Yazbek* (2012).

The facts in *Alan Yazbek v. Ghosn Yazbek* (2012) include thus: the testator's Will was saved in his laptop which was password secured. The Will in the computer device was neither signed nor attested to but with metadata information which gave the date the Will was created, the date changes were made on the document by the testator and the last day he accessed his Will which was not far from the date he died; the Court held that the testator meant the document in his laptop which could only be accessed after the services of an expert was engaged, to be his last testamentary disposition. It applied the dispensing power contained in (Succession Act, 2006) and waived the absence of signatures in the Will in validating the document. The key instrument needed for the application of the dispensing power was provided through metadata information.

Other jurisdictions where electronic Wills have been given legal recognition appear to rely on different guidelines for the acceptance of the Wills. One set of the guidelines are hinged on laws enacted either for electronic Wills or statutory Wills while the other allows for the use of dispensing powers which tend to waive some rules of formal requirement provided the conditions set out in the dispensing power are met in the Will under consideration (Kimberley, 2020). Thus, while the first may be termed formal electronic Will guidelines; the second takes care of informal Wills whether created electronically or through traditional means.

The Indiana Electronic Wills Statute (IN Code, 2018) is an example of a formal electronic Will statute with guidelines on the validation of Wills communicated through electronic medium. The statute recognizes the need for proper identification of the Will maker and provides inter alia for means through the testator's identity can be confirmed (Kimberley, 2020). The means approved by the law include any or all of the under listed:

1. information about the testator made available from a source that is authenticated;
2. information derived from the physical device;
3. a digital certificate;

4. a verification or authorization code sent to or used by the testator;
5. biometric identification or any other commercially reasonable method for verifying the testator's identity using current or future technology (Kimberley, 2020).

Another detailed means through which the electronic Will made by a testator is secured from manipulations and unsolicited changes is contained in the Arizona Electronic Will Statute (AZ Rev, 2019). The statute provides that the signatures of the Will maker and the attesting witnesses must be dated. It specifies that the electronic signature and seal of a notary shall be attached to the electronic Will of a testator (Kimberley, 2020). The statute provides further that the Will created through electronic means shall be placed under the exclusive custody of a designated and qualified custodian who must have met certain conditions stipulated in the statute (AZ Rev, 2019).

The Florida Electronic Will Statute (F. S. S, 2019) includes the protection of vulnerable individuals in its guidelines on the creation and storage of electronic Wills. The statute waives the requirement of electronic signature for the validation of Wills made by them and allows for the use of other electronic means including audio-visual communication for the authentication of testamentary wishes provided the latter is done under the supervision of a notary (F. S.S, 2019). The statutes on electronic Wills seem to have guidelines which corroborate the requirements for the making of valid Wills so, Wills created through the medium deserve to enjoy same legal recognition as traditional Wills.

The provisions of the Wills Act (1837) have also been relied upon to give validity to an electronic Will which was created in like manner as the traditional Wills. In *Estate of Javier Castro* (2013), the testator used a stylus pen to write his Will on a tablet and the same pen was used to sign on the document by the testator in the presences of two witnesses who visited him in the hospital. The attesting witnesses also signed the document in the presence of one another and the Will was secured with a password (*Javier Castro*, 2013). The Court of Common Pleas, Probate Division Lorain Country, Ohio validated the electronic Will without difficulty because it could read from the face of the electronic document printed out, the formal requirements stipulated by the statute on Wills (Na Crous, 2019). Perhaps, validation of off-line electronic Wills is less problematic as same judicial authority was given to the Will in *Taylor v. Holt* (2003) by the Tennessee Court of Appeal. In that case, the testator typed his Will in his computer device and invited two witnesses who physically watched him as he scanned a computer generated signature of his and affixed same on his Will. The Will was subsequently printed out for the witnesses to sign in the presence of the testator (*Taylor v. Holt* 2003). The Court found the Will properly executed in accordance with the Tennessee law which allows for the use of any symbol or method of execution welcomed by a party provided it was done with the intention of authenticating a writing or record and was carried out in the presence of the recommended number of witnesses (*Taylor v. Holt* 2003).

Dispensing powers provided in the statutes of jurisdictions such as South Africa Australia and the United States of America have been used to give legal effect to pure electronic Wills not executed in the traditional manner (Na Crous, 2019). In South Africa, the dispensing power contained in the Wills Act (1953) allowed the Court to use its discretion to give legal approval to the electronic Will made in *MacDonald & Ors. v. The Master & Ors* (2002). The testator's Will in that case was saved in his computer. He also left information about his Will and the password to aid its retrieval from the electronic device where it was stored. The Court reviewed the case and found that in accordance with the proviso in the dispensing power, the Will was made by no other but the testator whose intention was for it to serve as his last testamentary wishes (*MacDonald & Ors. v. The Master & Ors* 2002). It based its conclusion on the fact that the testator provided information about the location of his Will which show the authenticity of

the document and the intention of the maker. The Court held further that the electronic Will is a valid testamentary instrument and could be applied as intended by the testator.

In Australia, the electronic Will made in *Re:Yu* (2013) had to be considered for validation in accordance with the dispensing power provided in that jurisdiction (Succession Act, 1981). In that case, the testator had in his iPhone, some documents which conveyed his final parting compliments to some persons. One of those documents was identified as a Will but the query is whether the last wishes of a person could be conveyed through the form employed by the testator particularly as the name of the testator was used in place of signature though it was dated (*Re:Yu* (2013)). The Court relied on the conditions contained in the dispensing power to give effect to the Will because it found that as stipulated in the proviso, the electronic Will can be described as a document made by the testator containing her last wishes and intended by her to be used in the distribution of her property.

In *Re Estate of Horton* (2018) the Michigan's Harmless Error Statute was used to give legal acceptance to the electronic Will contained in the testator's phone and saved as 'Last Note' (*Re Estate of Horton*, 2018). The electronic Will contained instructions about his property after his demise with his name typed in the document perhaps to authenticate it. The testator also had a hand written document on how to access the electronic Will he made. The Court found that the document was defective of the formal requirements of a Will but met the conditions which could admit it as a legal Will under the harmless error law.

The fears which tend to work against the validation of electronic Wills are gradually whittling down with the continuous innovations on fraud prevention mechanisms in electronic communication. A lot of progress may have been achieved over the years but the search for a near perfect electronic Will making process is not ended. Similarly, the need for the inclusion of modern technology in the Will making process cannot be undermined particularly with the covid 19 experience which served as an eye opener to the uncertainties of regular activities (Wahibi & Batter, 2020). Therefore, the need for the use of technological devices to make Wills cannot be overemphasized.

CONCLUSION

The research demonstrates that the formal requirements for Wills, as defined by statutes, often fail to meet their intended purposes effectively, revealing significant limitations when applied judicially. Traditional Wills, with their rigid formalities, often fall short in providing adequate testamentary protection and fail to serve as reliable legal proof of execution. This inadequacy calls for an urgent need to adapt the law to technological advancements by incorporating electronic Wills, which offer a more reliable and verifiable means of expressing testamentary intentions.

Electronic Wills align with contemporary technological advancements, enhancing the accuracy and accessibility of testamentary documents. This modern approach mitigates to a considerable extent the issues which have bedevilled testamentary disposition, namely; suspicion, misinterpretation of testators' wishes and the unwarranted expenses incurred from time to time in order to update information contained in already made Wills. By focusing on the goals of formal rules and accommodating more features, electronic Wills promote the intended purposes of testamentary laws more effectively than traditional Wills. Therefore, the legal system must embrace the communication of Wills through electronic means to address the inadequacies of current formal requirements, ensuring the effectiveness of testamentary dispositions and enhancing the reliability and efficiency of Wills in the digital age.

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